



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0629; FRL- 9904-43-Region-4]

Approval and Promulgation of Implementation Plans; North Carolina; Transportation

Conformity Memorandum of Agreement Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the North Carolina State Implementation Plan (SIP) submitted on July 12, 2013, through the North Carolina Department of Environment and Natural Resources (NC DENR). This submission consists of memorandum of agreements (MOAs) establishing transportation conformity criteria and procedures related to interagency consultation, conflict resolution, public participation and enforceability of certain transportation-related control measures and mitigation measures. This action streamlines the conformity process to allow direct consultation among agencies at the Federal, state and local levels. This action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective on [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a

timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R04-OAR-2013-0629 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: EPA-R04-OAR-2013-0629, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 am to 4:30 pm, excluding Federal holidays.

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Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sheckler's telephone number is 404-562-9222. She can also be reached via electronic mail at Sheckler.kelly@epa.gov.

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I. What Action is EPA Taking?

EPA is taking direct final action to approve NC DENR's July 12, 2013 SIP submission, which consists of MOAs establishing transportation conformity criteria and procedures related to interagency consultation, conflict resolution, public participation and enforceability of certain transportation-related control measures and mitigation measures in the State of North Carolina and its SIP pursuant to the sections 110 and 176 of the CAA. Pursuant to section 110 of the

CAA, EPA is approving into the North Carolina SIP the July 12, 2013, transportation conformity MOAs.

II. Background for this Action

A. What is Transportation Conformity?

Transportation conformity is required under section 176(c) of the CAA to ensure that federally supported highway projects, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. Conformity¹ currently applies to areas that are designated nonattainment and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for transportation-related criteria pollutants including ozone, particulate matter (e.g., PM_{2.5} and PM₁₀), carbon monoxide, and nitrogen dioxide.

The 1990 Amendments to the CAA expanded the scope and content of the conformity concept by defining conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. Also, the CAA provides that no Federal activity will: (1) cause or contribute to any new violation of any NAAQS in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The requirements of section 176(c) of the CAA apply to all departments, agencies and instrumentalities of the Federal

¹ Conformity first appeared as a requirement in the CAA in the 1977 amendments (Pub. L. 95-95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. Chapter 53). EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP pursuant to section 176(c) of the CAA. The CAA also required the procedures to include a requirement that each state submit a revision to its SIP to include conformity criteria and procedures.

B. Why are States required to submit a Transportation conformity SIP?

EPA promulgated the first federal transportation conformity criteria and procedures (“Conformity Rule”) on November 24, 1993 (58 FR 62188) which was codified at 40 CFR part 51, subpart T and 40 CFR part 93. Among other things, the rule required states to address all provisions of the conformity rule in their SIPs, frequently referred to as “conformity SIPs.” Under 40 CFR 51.390, most sections of the conformity rule were required to be copied verbatim into the SIP. The rule has been subsequently revised on August 7, 1995 (60 FR 40098), August 15, 1997 (62 FR 43780) November 14, 1995 (60 FR 57179), April 10, 2000 (65 FR 18911), and August 6, 2002 (67 FR 50808).

On August 10, 2005, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) was signed into law. SAFETEA-LU revised section 176(c) of the CAA transportation conformity provisions by streamlining the requirements for conformity SIPs. Under SAFETEA-LU, states are required to address and tailor only three sections of the rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c). In general, states are no longer required to submit conformity SIP revisions that

address the other sections of the conformity rule. These changes took effect on August 10, 2005, when SAFETEA-LU was signed into law.

States may also choose to develop, in place of adopting federal regulations, a MOA which establishes the roles and procedures for transportation conformity. The MOA must include the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including the U.S. Department of Transportation (USDOT) Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and EPA.

C. How does Transportation Conformity Work?

The Federal or state transportation conformity rule applies to applicable NAAQS nonattainment and maintenance areas in the state. The Metropolitan Planning Organization (MPO), the state department of transportation (DOT) (in absence of a MPO), State and local air quality agencies, EPA and the USDOT are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as transportation improvement programs (TIP), transportation plans, and transportation projects. The projected emissions that will result from implementation of the transportation plans and programs are calculated and compared to the motor vehicle emissions budget (MVEB) established in the SIP. The calculated emissions must be equal to or smaller than the federally approved MVEB in order for the USDOT to make a positive conformity determination with respect to the SIP.

Pursuant to Federal regulations, when an area is designated nonattainment for a transportation-related NAAQS, the state is required to submit a transportation conformity SIP

one year after the effective date of the nonattainment area (NAA) designations. *See* Section 40 CFR 51.390(c). Previously, North Carolina established, and EPA subsequently approved, a transportation conformity SIP to address areas that were designated nonattainment or previously designated nonattainment for the carbon monoxide (CO) and 1-hour ozone² NAAQS. *See* 67 FR 32549 (December 27, 2002) for EPA's rulemaking related to approval on North Carolina's transportation conformity SIP. North Carolina's July 12, 2013, SIP revision updates and replaces North Carolina's previously-approved transportation conformity SIP.

Effective January 6, 1992 (59 FR 56694), EPA designated four counties in North Carolina as nonattainment for the CO NAAQS. Specifically, EPA designated the following areas as nonattainment for the CO NAAQS: (1) Durham and Wake Counties in the Raleigh-Durham Area; (2) Forsyth County in the Winston-Salem Area; and (3) Mecklenburg County in the Charlotte Area. Provided below in Section III(a), (c) and (e) are more details related to transportation conformity for the aforementioned areas for the CO NAAQS.

On June 15, 2004 (69 FR 23858), EPA designated seven areas in North Carolina as nonattainment for the 1997 8-hour ozone NAAQS. Specifically, EPA designated the following areas as nonattainment for the 1997 8-hour ozone NAAQS: (1) the Bi-state Charlotte-Gastonia-Rock Hill, NC-SC; (2) Fayetteville, NC; (3) Greensboro-Winston Salem-High Point, NC; (4) Great Smoky National Park (North Carolina portion); (5) Hickory-Morganton-Lenoir, NC; (6) Raleigh-Durham-Chapel Hill, NC; and (7) Rocky Mount, NC. Nonattainment designations

² Gaston and Mecklenburg Counties in the Charlotte-Gastonia Area; Durham and Wake Counties, and a portion of Granville County in the Raleigh-Durham Area; and Davidson, Forsyth and Guilford Counties, and a portion of Davie County in the Greensboro-Winston Salem-High Point Area were previously designated nonattainment for the 1-hour ozone standard and thus, implemented transportation conformity for the 1-hour ozone standard. However, EPA subsequently revoked the 1-hour ozone NAAQS for all these areas as part of the transition to the new 1997 8-hour ozone NAAQS, and because these areas had long complied with the 1-hour ozone NAAQS, transportation conformity ceased to apply in these Areas for the 1-hour ozone NAAQS.

became effective June 15, 2004, for the bi-state Charlotte-Gastonia-Rock-Hill, NC-SC;³ Great Smoky National Park;⁴ Raleigh –Durham-Chapel Hill, NC;⁵ and Rocky Mount, NC⁶ areas. As Early Action Compact (EAC) Areas,⁷ nonattainment designations were deferred for the Fayetteville, NC; Greensboro-Winston Salem-High Point, NC; and Hickory-Morganton-Lenoir, NC areas and, because these areas met all the requirements for EAC Areas, they were never effectively nonattainment for the 1997 8-hour ozone NAAQS. As such, these EAC Areas were not required to meet transportation conformity requirements for the 1997 8-hour ozone NAAQS. Provided below in Section III(a)-(f) are more details related to transportation conformity for the Charlotte-Gastonia-Rock-Hill, NC-SC; Great Smoky National Park, Raleigh –Durham-Chapel Hill, NC, and Rocky Mount, NC areas for the 1997 8-hour ozone NAAQS.

Effective April 5, 2005, EPA designated two areas in North Carolina as nonattainment for the 1997 PM_{2.5} NAAQS. Specifically, EPA designated the following areas as nonattainment for the 1997 PM_{2.5} NAAQS: (1) Greensboro-Winston Salem-High Point, NC;⁸ and (2) Hickory, NC.⁹ See 70 FR 944. Provided below in Section III(c) and (d) are more details related to

³ The Charlotte-Gastonia-Rock Hill 1997 8-hour ozone area consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties in their entirety, and a portion of Iredell County in North Carolina, and a portion of York County in South Carolina.

⁴ The Great Smoky National Park 1997 8-hour ozone area consists for a portion of Haywood and Swain Counties.

⁵ The Raleigh-Durham-Chapel Hill 1997 8-hour ozone area consists of Durham, Franklin, Granville, Orange, Johnston, Person and Wake Counties, in their entirety, and a portion of Chatham County.

⁶ The Rocky Mount 1997 8-hour ozone area consists of Edgecombe and Nash Counties in their entirety.

⁷ EAC areas entered into compacts with EPA whereby the areas agreed to reduce ozone pollution earlier than required by the CAA and meet specific milestones, in exchange for a deferred effective date for nonattainment designations for the 1997 8-hour ozone NAAQS. See 69 FR 23858, 23864-23869.

⁸ The Greensboro-Winston Salem-High Point 1997 annual PM_{2.5} area consists of Davidson and Guilford Counties in their entirety.

⁹ The Hickory 1997 annual PM_{2.5} area consists of Catawba County in its entirety.

transportation conformity for the Greensboro-Winston Salem-High Point, NC; and Hickory, NC areas for the 1997 PM_{2.5} NAAQS.

On April 30, 2012, EPA designated the bi-state Charlotte area nonattainment for the 2008 8-hour ozone NAAQS. *See* 77 FR 30088. Provided below in Section III(a) are more details related to transportation conformity for the bi-state Charlotte for the 2008 8-hour ozone NAAQS.

III. EPA Analysis of North Carolina's Submittal

EPA's Transportation Conformity rule requires the states to develop their own processes and procedures which meet the criteria in 40 CFR 93.105 for interagency consultation and resolution of conflicts among the federal, state, and local agencies. . The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and the USDOT in consulting with the state and local air quality agencies and EPA before making conformity determinations. The conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs , state DOTs, and the USDOT. Additionally, the SIP revision must include provisions addressing the enforceability of certain transportation-related control measures and mitigation measures.

On July 12, 2013, the State of North Carolina, through NC DENR, submitted its "Conformity SIP" for the applicable transportation-related NAAQS. Specifically, North Carolina requested EPA approval of its Conformity SIP which included MOAs signed by the federal and state transportation and air quality partners, and all of the MPOs in the state subject to transportation conformity requirements. The North Carolina Conformity SIP establishes new procedures for interagency consultation, dispute resolution, public participation and

enforceability of certain transportation-related control measures and mitigation measures, and supersedes the MOA incorporated into the SIP on November 19, 2003. Prior to today, the MOAs in the SIP included procedures for interagency consultation and also incorporated EPA regulations in 40 CFR 93 Subpart A (July 1, 1997) and 62 FR 43780 (August 15, 1997) by reference. The MOAs that EPA is approving in this action no longer incorporate the federal conformity rules by reference. More details on the Areas that these MOAs relate to are provided below in this Section.

a. Bi-State Charlotte Area

Counties (or portions of counties) in the bi-State Charlotte Area comprise the maintenance area for the CO NAAQS; the nonattainment area for the 1997 8-hour ozone NAAQS; and the nonattainment area for the 2008 8-hour ozone NAAQS. As indicated above, Mecklenburg County in the Bi-State Charlotte Area for the CO NAAQS; and Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties in their entireties, and a portion of Iredell County in North Carolina, and a portion of York County in South Carolina in the Bi-State Charlotte Area for the 2008 8-hour ozone NAAQS are required to implement transportation conformity requirements. Effective July 20, 2013, EPA revoked the 1997 8-hour ozone NAAQS for the purpose of transportation conformity as part of the transition between the implementation of the 1997 8-hour ozone NAAQS and 2008 8-hour ozone NAAQS. *See* 77 FR 30160. As such, the bi-state Charlotte Area is no longer required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS.

There are 3 MPOs within the bi-state Charlotte Area for the 2008 8-hour ozone NAAQS, and a portion of the nonattainment area that is not within the jurisdiction of a MPO. The MPOs

in the bi-state Charlotte Area include the Mecklenburg-Union MPO (MUMPO), the Cabarrus-Rowan Urban MPO, and Gaston Urban Area MPO. The areas that are not within the jurisdiction of a MPO are known as “donut” areas. The State DOT is responsible for implementation of transportation conformity requirements in donut areas. For the purposes of transportation conformity requirements related to the CO NAAQS, MUMPO serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations. For the purpose of transportation conformity requirements related to the 2008 8-hour ozone NAAQS, MUMPO, Cabarrus-Rowan Urban MPO, Gaston Urban Area MPO and NC DOT coordinate and serve as the lead agencies for the preparation, consultation, and distribution of the conformity determinations for their respective portions of the bi-state Charlotte Area. As such, the NC DENR worked with MUMPO, Cabarrus-Rowan Urban MPO, Gaston Urban Area MPO, NC DOT, and the other applicable transportation and air quality partners for the Area to develop and execute MOAs to address the consultation and other applicable transportation conformity requirements for the Area. These MOAs are provided in the docket for today’s rulemaking. Today, EPA is proposing to approve the inclusion of the MOA for the MUMPO, Cabarrus-Rowan Urban MPO, Gaston Urban Area MPO, and NC DOT into the North Carolina SIP.

The State of South Carolina has established conformity procedures for the portion of York County which makes up the South Carolina portion of the bi-state Charlotte Area in its individual conformity SIP. EPA approved South Carolina’s Conformity SIP on July 28, 2009. *See* 74 FR 37168. North Carolina’s July 2013 SIP revision updates the transportation conformity consultation, conflict resolution and public participation procedures, and includes provisions addressing the enforceability of certain transportation-related control measures and mitigation measures for its portion of the bi-state Charlotte Area.

b. Great Smoky Mountain National Park Area

Portions of Haywood and Swain Counties comprise the Great Smoky National Park maintenance area for the 1997 8-hour ozone NAAQS. As indicated above, the Great Smoky Mountain National Park Area was required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS as a maintenance area. As such, the NC DENR worked with the Great Smoky Mountain National Park Service, and the other applicable transportation and air quality partners for the Area to develop and execute a MOA to address the consultation and other applicable transportation conformity requirements for the Area. This MOA is provided in the docket for today's rulemaking. EPA notes that effective July 20, 2013, the 1997 8-hour ozone NAAQS was revoked for the purpose of transportation conformity. *See* 77 FR 30160.

Transportation conformity is, therefore, not currently required for the Great Smoky Mountain National Park Area under the CAA. Today, however, EPA is proposing to approve the inclusion of the MOA for the Great Smoky Mountain National Park Area into the North Carolina SIP in the event that the Area will be required to implement transportation conformity requirements for a future transportation-related NAAQS.

c. Greensboro-Winston Salem-High Point Area

Counties (or portions of counties) in the Greensboro-Winston Salem-High Point Area comprise the maintenance area for the CO NAAQS; and the maintenance area for the 1997 PM_{2.5} NAAQS. As indicated above, Forsyth County in the Greensboro-Winston Salem-High Point Area for the CO NAAQS; and Davidson and Guilford Counties in the Greensboro-Winston Salem-High Point Area for the 1997 PM_{2.5} NAAQS are required to implement transportation

conformity requirements. Also, as mentioned above, the Greensboro-Winston Salem-High Point Area was an EAC area for the 1997 8-hour ozone NAAQS. This Area was designated nonattainment on June 15, 2004, for the 1997 8-hour ozone NAAQS, with a deferred effective date. The Area met all of the EAC milestones and was ultimately never effectively designated nonattainment for the 1997 8-hour ozone NAAQS. The Area was therefore never required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS, but was required to continue to implement transportation conformity requirements for the 1-hour ozone NAAQS in the Area until this requirement was removed as a result of the Area successfully meeting the EAC milestones for the 1997 8-hour ozone NAAQS.

There is one MPO, Greensboro Urban Area MPO, within the Greensboro-Winston Salem Area for the 1997 PM_{2.5} NAAQS. The MPOs for the 1997 8-hour ozone NAAQS for the Greensboro-Winston Salem Area included the Greensboro Urban Area MPO, High Point Urban Area MPO, Winston Salem -Forsyth's Urban Area MPO, and Burlington-Graham MPO. The areas that are not within the jurisdiction of a MPO are known as "donut" areas. The State DOT is responsible for implementation of transportation conformity requirements in donut areas. For the purposes of transportation conformity requirements related to the CO NAAQS, the Winston Salem-Forsyth Urban Area MPO serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations. For the purpose of transportation conformity requirements related to the 1997 PM_{2.5} NAAQS, the Greensboro Urban Area MPO coordinates and serves as the lead agencies for the preparation, consultation, and distribution of the conformity determinations for the Greensboro Area.

The NC DENR worked with the Greensboro Urban Area MPO, High Point Urban Area MPO, Winston Salem -Forsyth's Urban Area MPO, Burlington-Graham MPO, the NC DOT, and

the other applicable transportation and air quality partners for the Area to develop and execute MOAs to address the consultation and other applicable transportation conformity SIP requirements for the Area. These MOAs are provided in the docket for today's rulemaking. North Carolina's July 2013 SIP revision updates the transportation conformity consultation, conflict resolution and public participation procedures, and includes provisions addressing the enforceability of certain transportation-related control measures and mitigation measures for the Greensboro-Winston Salem-High Point Area. Today, EPA is proposing to approve the inclusion of the MOAs for the Greensboro Area (i.e., for the Greensboro Urban Area MPO, and Winston Salem -Forsyth's Urban Area MPO) in relation to PM_{2.5} and CO into the North Carolina SIP. While transportation conformity is not currently required for the remainder of this area under the CAA because these areas (i.e., the High Point Urban Area and Burlington-Graham Area) successfully met the EAC milestones for the 1997 8-hour ozone NAAQS, EPA is also proposing to approve the inclusion of the MOAs for these areas in the event that any of these areas will be required to implement transportation conformity requirements for a future transportation-related NAAQS.

d. Hickory Area

The Hickory Area is a maintenance area for the 1997 PM_{2.5} NAAQS. As indicated above, the Hickory Area is required to implement transportation conformity requirements for the 1997 PM_{2.5} NAAQS as a maintenance area. As such, the NC DENR worked with the Greater Hickory MPO, and other applicable transportation and air quality partners for the Area to develop and execute a MOA to address the consultation and other applicable transportation conformity SIP requirements for the Area. This MOA is provided in the docket for today's

rulemaking. North Carolina's July 2013 SIP revision updates the transportation conformity consultation, conflict resolution and public participation procedures and includes provisions addressing the enforceability of certain transportation-related control measures and mitigation measures for the Hickory Area. Today, EPA is proposing to approve the inclusion of the MOA for the Greater Hickory MPO into the North Carolina SIP.

e. Raleigh-Durham-Chapel Hill Area

Counties (or portions of counties) in the Raleigh-Durham-Chapel Hill comprise a maintenance area for the CO NAAQS; and a maintenance area for the 1997 8-hour ozone NAAQS for the Area. As indicated above, Durham and Wake Counties in the Raleigh-Durham Area for the CO NAAQS are required to implement transportation conformity requirements. Also mentioned above, Durham, Franklin, Granville, Orange, Johnston, Person and Wake Counties, in their entireties, and a portion of Chatham County in the Raleigh-Durham-Chapel Hill Area were included in the maintenance area for the 1997 8-hour ozone NAAQS, and thus required to implement transportation conformity requirements. Effective July 20, 2013, EPA revoked the 1997 8-hour ozone NAAQS for the purpose of transportation conformity as part of the transition between the implementation of the 1997 8-hour ozone NAAQS and 2008 8-hour ozone NAAQS. *See* 77 FR 30160. As such, the Raleigh-Durham-Chapel Hill Area is no longer required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS.

The NC DENR worked with the Burlington-Graham MPO, Durham-Chapel Hill-Cabarrus MPO, the North Carolina Capital Area MPO, the NC DOT, and the other applicable transportation and air quality partners for the Area to develop and execute MOAs to address the consultation and other applicable transportation conformity SIP requirements for the Area.

These MOAs are provided in the docket for today's rulemaking. North Carolina's July 2013 SIP revision updates the transportation conformity consultation, conflict resolution and public participation procedures, and includes provisions addressing the enforceability of certain transportation-related control measures and mitigation measures for the Raleigh-Durham-Chapel Hill Area. Today, EPA is proposing to approve the inclusion of the MOAs for the Raleigh-Durham Area (i.e., for the Durham-Chapel Hill-Carrboro MPO, and the North Carolina Capital Area MPO) in relation to CO into the North Carolina SIP. While transportation conformity is not currently required for the remainder of this area (i.e., the Burlington-Graham Area) under the CAA, EPA is also proposing to approve the inclusion of the MOA for the remainder of this area in the event that the area will be required to implement transportation conformity requirements for a future transportation-related NAAQS.

f. Rocky Mount Area

Edgecombe and Nash Counties comprise the Rocky Mount maintenance area for the 1997 8-hour ozone NAAQS. As indicated above, the Rocky Mount Area was required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS as a maintenance area. As such, the NC DENR worked with the Rocky Mount Urban Area MPO, and other applicable transportation and air quality partners for the Area to develop and execute a MOA to address the consultation and other applicable transportation conformity SIP requirements for the Area. This MOA is provided in the docket for today's rulemaking. North Carolina's July 2013 SIP revision updates the transportation conformity consultation, conflict resolution and public participation procedures and includes provisions addressing the enforceability of certain transportation-related control measures and mitigation measures for the

Rocky Mount Area. EPA notes that effective July 20, 2013, the 1997 8-hour ozone NAAQS was revoked for the purpose of transportation conformity. *See* 77 FR 30160. Transportation conformity is, therefore, not required for the Rocky Mount Urban Area under the CAA. Today, however, EPA is proposing to approve the inclusion of the MOA for the Rocky Mount Urban Area MPO in the event that the Area will be required to implement transportation conformity requirements for a future transportation-related NAAQS.

g. Analysis of North Carolina's MOAs and Conformity SIP

The State of North Carolina developed its MOAs based on the elements contained in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) and included them in the SIP. As a first step, the State worked with the existing transportation planning organization's interagency committees that included representatives from the NC DENR; NC DOT; the MPOs in the State; Federal Highway Administration—North Carolina Division; Federal Transit Administration; and the Region 4 office of EPA. The interagency committee met regularly and drafted the consultation procedures considering elements in 40 CFR Part 93.105, 93.122(a)(4)(ii), and 93.125(c), and integrated the local procedures and processes into the MOAs. The resulting consultation process developed is unique to the State of North Carolina. A public notice announcement was issued on July 20, 2012, indicating that the MOAs were available for public comment until August 24, 2012. No request for a public hearing was received. The NC DENR posted the MOAs on their website and provided access to the documents for review in person at the NC DENR central office in Raleigh and seven regional offices throughout the state. The final MOAs were issued by North Carolina on October 1, 2012, and subsequently submitted as a SIP revision to EPA on July 12, 2013, after signature from all signatories.

EPA has evaluated this SIP revision and has determined that the State has met the requirements of federal transportation conformity rules as described in 40 CFR Part 51, Subpart T and 40 CFR Part 93, Subpart A. NC DENR has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the MOA at the local level. Therefore, EPA is approving the MOAs as a revision to the North Carolina SIP. EPA's rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, state, and local agencies; resolution of conflicts; and public participation meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and US DOT in consulting with the state and local air quality agencies and EPA before making conformity determinations. The conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and the USDOT. In addition, the SIP revision must include provisions to address the enforceability of certain transportation-related control measures and mitigation measures meeting the criteria of 40 CFR 93.122(a)(4)(ii) and 93.125(c).

EPA has reviewed the submittal to assure consistency with the CAA as amended by SAFETEA-LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing applicable procedures for transportation conformity and interagency consultation and has concluded that the submittal is approvable. Details of our review are set forth in a technical support document (TSD), which has been included in the docket for this action. Specifically, in the TSD, we identify how the submitted procedures satisfy our requirements under 40 CFR 93.105 for interagency consultation with respect to the development of transportation plans and programs, SIPs, and conformity determinations, the resolution of conflicts, and the provision of adequate

public consultation, and the requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures.

IV. Final Action

For the reasons set forth above, EPA is taking direct final action, pursuant to section 110 and 176 of the Act, to approve North Carolina's July 12, 2013, transportation conformity SIP and MOAs to implement the conformity consultation, conflict resolution and public participation procedures, and provisions addressing the enforceability of certain transportation-related control measures and mitigation measures in the State of North Carolina. This action also establishes consultation procedures for all counties in North Carolina. As a result of this action, North Carolina's previously SIP-approved conformity procedures for North Carolina at 67 FR 32549 (December 27, 2002), will be replaced by the procedures submitted to EPA on July 12, 2013, and approved in this action.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days from the date of publication] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not

institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after

it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s Federal Register; rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Incorporation by reference, Intergovernmental relations, Incorporation by reference Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 10, 2013.

Beverly H. Banister,
Acting Regional Administrator,
Region 4.

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 et seq.

Subpart II – North Carolina

2. Section 52.1770(e) is amended by adding a new entry at the end of the table for “North Carolina Transportation Conformity Air Quality Implementation Plan” to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA Approved North Carolina Non-Regulatory Provisions

Provision	State effective date	EPA approval date	Explanation
**	**	**	*
North Carolina Transportation Conformity Air Quality Implementation Plan	July 12, 2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

[FR Doc. 2013-30542 Filed 12/24/2013 at 8:45 am; Publication Date: 12/26/2013]